SPEECH

OF

A. P. BUTLER, OF SOUTH CAROLINA,

ON THE BILL PROVIDING FOR

THE SURRENDER OF FUGITIVE SLAVES.

DELIVERED

IN SENATE OF THE UNITED STATES, JANUARY 24, 1850.

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RECOVERY OF FUGITIVES FROM LABOR.

The Senate having proceeded to the special order of the day, being the following bill, viz:

A BILL to provide for the more effectual execution of the third clause of the second section of the fourth article of the Constitution of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, when a person held to service or labor in any State or Territory of the United States, under the laws of such State or Territory, shall escape into any other of the said States or Territories, the person to whom such service or labor may be due, his or her agent, or attorney, is hereby empowered to seize or arrest such fugitive from service or labor, and to take him or her before any judge of the circuit or district courts of the United States, or before any commissioner, or clerk of such courts, or marshal thereof, or any postmaster of the United States, or collector of the customs of the United States, residing or being within such State wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge, commissioner, clerk, marshal, postmaster, or collector, as the case may be, either by oral testimony, or affidavit taken before and certified by any person authorized to administer an oath under the laws of the United States, or of any State, that the person so seized or arrested under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge, commissioner, clerk, marshal, postmaster, or collector, to give a certificate thereof to such claimant, his or her agent, or attorney, which certificate shall be a sufficient warrant for taking and removing such fugitive from service or labor to the State or Territory from which he or she fled.

SEC. 2. *And be it further enacted*, That when a person held to service or labor, as mentioned in the first section of this act, shall escape from such service or labor, as therein mentioned, the person to whom such service or labor may be due, his or her agent, or attorney, may apply to any one of the officers of the United States named in said section, other than a marshal of the United States, for a warrant to seize and arrest such fugitive, and upon affidavit being made before such officer, (each of whom for the purposes of this act is hereby authorized to administer an oath or affirmation,) by such claimant, his or her agent, that such person does, under the laws of the State or Territory from which he or she fled, owe service or labor to such claimant, it shall be, and is hereby, made the duty of such officer, to and before whom such application and affidavit is made, to issue his warrant to any marshal of any of the courts of the United States to seize and arrest such alleged fugitive, and to bring him or her forthwith, or on a day to be named in such warrant, before the officer issuing such warrant, or either of the other officers mentioned in said first section, except the marshal to whom the said warrant is directed, which said warrant or authority the said marshal is hereby authorized and directed in all things to obey.

SEC. 3. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, or any person or persons assisting him, her, or them, in so serving or arresting such fugitive from service or labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared, or shall aid, abet, or assist such person so owing service or labor to escape from such claimant, his agent or attorney, or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of one thousand dollars, which penalty may be recovered by and for the benefit of such claimant, by action of debt in any court proper to try the same, saving, moreover, to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them.

SEC. 4. *And be it further enacted*, That when said person is seized or arrested under and by virtue of the said warrant, by such marshal, and is brought before either of the officers aforesaid, other than said marshal, it shall be the duty of such officer to proceed in the case of such person, in the same way as he is directed and authorized to do when such person is seized and arrested by the person claiming him, or by his or her agent or attorney, and is brought before such officer under the provisions of the first section of this act.

Mr. BUTLER rose and addressed the Senate as follows:

Mr. PRESIDENT: It may seem like trespassing on the feelings which have been excited by the eloquent remarks which have just fallen from the honorable Senator from Kentucky, to introduce such a bill as this. It is passing from the feelings of harmony which Washington's Farewell Address is so well calculated to inspire, to considerations growing out of a bill which addresses itself to sectional obligations. Harmony and union may be preserved by the performance of mutual duties. The bill under consideration requires nothing more than is enjoined by the Constitution, and which contains the bond of union and the security of harmony; and, in the name of Washington, I would invoke all parties to observe, maintain, and defend it. It was the handiwork of sages and patriots, and resulted from intelligent concessions, for the benefit of all. Whether it has operated under the influence which gave it existence, and looked to an impartial equality, is not a subject that calls for a remark at this time. I will now address myself to the task before me.

Mr. President, this bill was reported to the Senate more than two years ago. I repeatedly tried to have it taken up, but have invariably failed, from some cause or other, perhaps beyond my conjecture; and, since the first time it was introduced, the mischiefs at which it was aimed have increased. I read this morning in one of the newspapers, (the Louisville Journal,) that from accurate statements $30,000 of slave property is abstracted from Kentucky annually, by persons who inveigle the slaves from the borders of Kentucky. I suppose the same remark may be made with relation to Virginia, to Maryland, and some portions of the remark may have reference to Missouri; and, taking it all in all, the mischief at which this bill aims has increased so within the last two years that the people of the slaveholding States have suffered for the want of some provision on this subject. The loss may be estimated at $200,000 annually by this species of interference with our

property—what I might call wickedly mischievous; what I will call improper and illegal. It is an invasion of recognized constitutional rights by those who ought to respect them.

Mr. President, I have said this much, and candor requires me to say further, that I have no very great confidence that this bill will subserve the ends which seem to be contemplated by it. The Federal Legislature, within its constitutional competency, has too limited means to carry out the article of the Constitution to which this bill applies; and, sir, I know this much, that the cardinal articles of the Constitution are not to be preserved by statutory enactments upon parchment. They must live and be preserved in the willing minds and good faith of those who incurred the obligation to maintain them. And I do not venture too much when I say that, when this article was adopted, it was not only understood then, but was the practice for many years afterwards, for the States to coöperate in their duty of delivering up fugitive slaves.

Sir, it is perhaps necessary that I should read that article of the Constitution, as I intend to make some comments upon it. I intend to go into this matter with no feeling, so far as I know myself. I shall discuss it as a legal and constitutional question, that presents itself to the good faith and the best recollections of the history of this country. Sir, the article of the Constitution upon which I am to comment, which is proposed to be enforced by this bill, is in the following words:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

Now, sir, what is the obvious import of such terms? Is it not that, when an owner pursues a servant into a non-slaveholding State, he has a right to apply to an officer for process to apprehend him, when he is unable to do it himself? Why, sir, I speak somewhat from my own recollection on this subject. Not twenty years ago a citizen could go to New York, and apprehend a runaway slave with almost as much ease as in the city of Charleston. It was not difficult at that time. Why, sir, many persons of the South were in the habit of going to Philadelphia, and carrying their servants with them, and living there; and I believe there never was any interference with the owner's control, or any obstacle in calling upon the magistrate of the country to deliver up the slaves when they escaped. Such had been the understanding, without any law upon the subject, till about 1793, when, in consequence of some difficulty between Virginia and Pennsylvania, a law was passed known as the law of 1793—the provisions of which I will not now read, because I have submitted a report containing it, I mean the essential part of it. I will take leave here to remark, that as I have submitted a report upon this subject, setting forth in detail the state and tendency of the law in the non-slaveholding States, and other reasons which have called for this bill, I shall now content myself with alluding, in general terms, to these laws and the decisions of the courts connected with them. This may save time, and advance the progress of this discussion. That act contained a provision that a master or owner had a right to pursue and apprehend a slave. That was the act—not confining them exclusively to the federal tribunal, but also giving them a right to apply to State officers. The constables and all officers were required to coöperate in giving that efficacy to the clause of the Constitution which it was proposed to enforce by its terms. Now, sir, how long did that act stand? That act continued, without any question, for many years; and I believe the first time it was assailed was by a decision in the courts of New York. The result of that decision was to hold that Congress had no right to devolve upon the State officers the duty of carrying out the provisions of the Federal Constitution. That was the first move. The next step was easily taken, and, I believe, was first taken in the State of New York; and laws were passed positively forbidding the magistrates and other State officers from aiding to deliver fugitive slaves upon the application of their masters. The act of '93 assumed the unquestionable right of the owner to apprehend his own slave—to take and control his own property—and recognized, as an unquestionable duty, that the State should coöperate, through their State officers and courts, to give him their aid in the enforcement of this right.

The legislation of the non-slaveholding States seemed to have been aimed, in the first instance, to break down the provisions of this act—some by one way, and some by another—all, (I allude to the Northern and Eastern States,) however, having a common tendency.

These States never seemed to think it worth while to inquire whether this species of legislatio was unconstitutional. That it was so, however, was apparent to everybody else, and has been so held by the highest judicial tribunal.

The legislation of these States has been of a *different* character, with but *one* aim. *That* which took place previous to the judgment of the Supreme Court, in the case of Prigg *vs.* Pennsylvania, and which I shall have occasion to notice, was with a view to counteract the legislation of Congress, and, in its operation, to defeat the Constitution. *That* which has taken place since that decision has been skillfully framed to evade the force and effect of the judgment. Its whole character has been that of an adversary, framing its legislation with skillful hostility to the rights, the constitutional rights, of the slaveholding States of this Confederacy. The result has been that there stands the Constitution, a dead letter, and here lives the State legislation that destroyed it. The Constitution has been stationary, whilst laws have been aggressively progressive. I shall have to allude to these laws to make my remarks intelligible, and also to show how dangerous it is to trust to popular prejudice when it insinuates itself into legislative bodies, and especially to expose the influence of an uncontrolled sectional interest.

Pennsylvania passed a law in 1826—the one that was decided to be unconstitutional in the case of Prigg *vs.* Pennsylvania—the purport of which was, that no fugitive slave should be arrested without a warrant, nor discharged without an order of some judicial magistrate, and imposed high penalties on an owner for apprehending his own slave wherever he might find him.

Mr. COOPER. Will the Senator allow me to make a remark by way of correction?

Mr. BUTLER. With pleasure.

Mr. COOPER. The law to which the Senator refers is known as the law of 1826. The passage

of that law was procured by the State of Maryland. Commissioners—Messrs. Meredith and ——, if I recollect aright—were sent by the State of Maryland to Pennsylvania to procure the passage of such a bill. The main features of that bill were draughted and presented to the Legislature of Pennsylvania by those gentlemen, the commissioners of Maryland, and the bill was passed at their instance. Pennsylvania would not have enacted any such law, I presume, if it had not been upon the application of her sister State of Maryland, who desired that legislation upon the subject by the State should take place.

Mr. BUTLER. I suppose, from what the Senator says, some law had become actually necessary for Maryland. And it seems that then Pennsylvania felt an obligation to pass some law allowing an owner to apprehend his fugitive under a warrant. But how were that law and its true obligations regarded? The case of Prigg—the details of which will be found in the report which I have submitted—will show.

The owner did apprehend his servant under a warrant, and carried him before a justice, who refused to discharge him. The defendant took the servant to Maryland; and, for doing so, after he had been refused an order of discharge from the magistrate, he was, according to the terms of the law, liable to its penalties—to be incarcerated in the penitentiary, &c.

At the same time there were laws in New York and other States prohibiting State officers from issuing warrants and giving discharges, and at the same time regarding an owner as a trespasser who should apprehend his fugitive without an order. Under such a state of legislation, it is not difficult to see what was the fate of the owner. One afforded a remedy which the officer would not enforce, and the other refused all remedy whatever.

This kind of legislation was a *violation* of the Constitution. The other kind which I shall notice, is a fraudulent *evasion* of its obligations, and of the judgment of the courts.

The case of Pennsylvania *vs.* Prigg has asserted a sound doctrine on the issue before it, but has given rise to a pretext for the legislation which I shall have occasion to notice, and which all judicial tribunals ought to regard as unconstitutional and void.

Mr. DICKINSON. Will the Senator allow me to say that the courts of New York have pronounced the laws alluded to as unconstitutional?

Mr. BUTLER. Yes, sir; it affords me real pleasure to pay a compliment to some of the judges of New York; they have preserved the purity of the ermine, and maintained the integrity of the magistrate. Judge Nelson has given a luminous opinion, and, what I regard a higher merit, a firm judgment on this matter. *He* never allowed the judge to be lost in the facile politician when he was called on to maintain the Constitution of his country. His judgment has truth to sustain it, and ability to vindicate it. An upright judge is the best of men; for, under the panoply of the law, he makes a weak party as strong as the greatest; he makes his tribunal the impartial leveler of parties, and makes his court as a city of refuge. I wish I could say the same of other functionaries. I wish I could say it of other functionaries of New York. A Governor of that State—perhaps a politician consulting popularity, or one who had a conscience that took refuge in a morality that was above that of other men, and above the obligation of the Constitution of his country, as I would say—openly assumed the ground that he would not deliver up a fugitive from justice, upon the application of another State, if it should only appear that he had been charged with stealing or inveigling a slave from his owner—holding, as I understand, that he would not regard anything a felony that was not so regarded by her own laws. I believe his course was repudiated by his own Legislature; and, from the highest judge to the lowest tipstaff, he has no countenance for his sage opinion.

I perceive I have interfered with the main thread of my argument, and return to it.

I have said before, that, in the case of Prigg *vs.* Pennsylvania, the Supreme Court had decided that all the previous legislation referred to was unconstitutional; that judgment brought within its scope subjects that were not in issue, and which ought not to be affected by it. The true issue in the case was, whether an owner, in a slaveholding State, had a right to pursue and apprehend his runaway slave in a non-slaveholding State without the authority of a warrant or the discharge of a judge. Upon this point the judges were unanimous, and the judgment of the court most satisfactory—a judgment full of historical instruction on the subject of slavery, as recognized and protected under the Constitution. I commend gentlemen to a faithful perusal of it.

The decision is a strong commentary on the adversary legislation of some of the non-slaveholding States, and exposes, in a rebuking light, the extent of the unconstitutional aggressions of those States, and ought to be a warning to them in the future. Power, I fear, unchecked by opposition, has no other limits than its interests or prejudices may prescribe.

Since the decision has been made, the great effort has been to evade it, by recognizing as law what was not actually decided, with a view of defeating the force of the judgment on the only question that was decided.

I have alluded to Pennsylvania in no invidious temper, but only for illustration of the state of the law before the decision in the case of Prigg. I now refer to her legislation, since that, for the same purpose. Her law has an imposing title to guard personal liberty. I have it before me. This law declares and provides that if any one shall pursue and apprehend a person of color in such a way as to be guilty of a breach of the peace, he shall be subject to all the penalties and the high penalties of this act. Who, sir, does not see through the flimsy covering of this law? The whole amount of the operation of the act is this, (for I choose to be frank and plain, when I put an important proposition:) A man from the South goes to Pennsylvania, and there he sees his servant. The magistrate says to him, you have a right to apprehend him, for the court has so decided. But, at the same time, this magistrate turns round, and says to the servant, Bob, if he commit any violence upon you, or be guilty, in the manner of capturing you, of what would amount to a breach of the peace, he must himself be arrested, and for his trespass be put in prison under the operation of our law. If three or more persons should unite in their efforts to take the

slave with any violence, arising from any resistance or difficulty in subjugating him, or bringing him under control, then the parties might be indicted for a riot; for a riot is defined to be a breach of the peace by a concert of three or more persons. If he lay his hands too heavily upon the slave, it may be called an assault and battery. If he enters a house, and raise the latch a little too strongly, then it may be styled forcible entry and detainer. So the master may be placed in prison, instead of the slave. This cannot be denied. Such, sir, is the probable operation of the law in Pennsylvania.

Vermont has a law evidently aimed at this decision, and with a view to evade it, providing, in terms, that any one—not only any magistrate, but any *citizen*—who shall give assistance to the master in pursuit of the slave, shall be subject to certain fines and penalties imposed by the act. In other words, all officers and citizens are prohibited, under heavy penalties, from carrying out the provision of the Constitution referred to. I suppose if an owner were to apply for assistance, the reply to him would be, you have your remedy in your own hands; which would be nothing more than leaving him to pursue his slave in the face of an adverse public opinion, and with all the hazard of irresponsible violence. Sir, he would be told, pursue him; there he is. Pursue him where? Sir, you might as well undertake to pursue him throughout the Cretan labyrinth as to pursue him in Vermont, under circumstances of this kind, with a mob protecting him, and in a State where the law imposes no penalties for assisting the slave, but imposes them upon all officers who may give countenance to owners in pursuit of fugitive slaves. Massachusetts has a law of the same import; and Rhode Island has adopted it *totidem verbis*.

With regard to the State of New York, of which I now propose to speak, it may be safely said that her legislation has been cumulatively unconstitutional. Her own courts have so decided; and, becoming tired of this kind of a war on the slaveholding States, she seems to think it most expedient, or her demagogues think so, to give herself up to agitation. I believe one of her Senators (not my friend who sits near me, Mr. DICKINSON) owes his seat here, in some measure, to this species of agitation—an agitation whose waves are always beating at the base of, I fear, a crumbling Constitution—an agitation as unwise as it is criminal—an agitation that requires firmness to resist it. There are but few men in any republic who have firmness to resist these popular tendencies; but their character is preserved in history, and impartial posterity delights to contrast them with popular demagogues, who are satisfied if they can stand, for the time, on the wreck of their country. The latter are like the reed that reproached the prostrate oak with the imprudence of breasting the storm.

I hold popular agitators the worst kind of men; they preserve a mean life frequently at the expense of a whole nation. When there are no positive acts, it is fair to look to public men as exponents of public opinion.

I do not believe that there is any law in Maine; so far as I understand it, I know of no law upon the subject—to sustain the act of 1793. How fair their representatives stand upon the record, I will not say; but one of them is known to be identified with every endeavor to obstruct the carrying out of that act, and to be hostile to and ready to make war, in every way, upon that institution of the South, so far as he can, either upon this floor or any where.

As to New Hampshire, her absent Senator [Mr. HALE] will speak for her wherever he goes. She is hardly equivocal on this subject. The laws of Connecticut are of the same import with those of Massachusetts.

Mr. BALDWIN. Will the Senator allow me to make a correction in regard to the State of Connecticut? The law is simply this: It prohibits—since the decision of the Supreme Court of the United States in the case of Prigg *vs.* Pennsylvania, declaring State legislation on this subject unconstitutional—any judge, justice of the peace, or other officer of the State, as such, from acting in the capacity in which the act of Congress undertakes to impose a duty on the State magistrates and officers. It inflicts no penalty. It simply declares the action of the magistrate or officer so undertaking to act to be null and void. It provides, nevertheless, "that nothing therein contained shall be construed to impair any rights 'which, by the Constitution of the United States, 'may pertain to any person to whom, by the laws 'of any other State, labor or service may be due 'from any fugitive escaping into the State, or to 'prevent the exercise in the State of any powers 'which may have been conferred by Congress on 'any judge or other officer of the United States in 'relation to such rights."

The State of Connecticut had enacted a law, prior to the decision of the Supreme Court in the case of Prigg *vs.* Pennsylvania, which provided for the exercise of this power by any judge in the State who had authority, under its laws, to issue the writ of *habeas corpus*. It provided, also, for the security of the free colored citizens of the State against unlawful seizure and detention, under the claim or pretext that they were slaves, by giving them a right to be heard before these judges, and to a trial by jury, if either party desired it, of the question at issue between them. That law was repealed immediately after the decision of the Supreme Court in the case referred to, that the power and the duty to enforce the constitutional provision for the surrender of fugitive slaves pertained exclusively to the National Government. It was not deemed proper that officers and magistrates of the State should be permitted, in their official capacities, to exercise powers not conferred by the State nor subject to be regulated by its laws, but attempted to be conferred on them by a Government by which they were not appointed, and to which they were in no way responsible.

Mr. BUTLER. New Jersey has a law of similar purport to that of Pennsylvania, referred to; one to protect personal liberty, and to give a trial by jury, &c.

I now come to the northwestern non-slaveholding States, beginning with Ohio. She had a black code, I believe. It has been so often modified that it is extremely difficult to understand it at this time. But her public men are her exponents, or some of them. One, [illegible] on this floor, has openly said, in a r[illegible]aid to have been proposed by him at a [illegible] free soilers, that, under an oath to sup[illegible] Constitution of the United

States, he would feel at liberty, under a mental reservation, to regard this article as null and void.

Mr. CHASE. To whom does the Senator allude?

Mr. BUTLER. I allude to the Senator himself, and to the resolution introduced by him in a convention held in 1843.*

Mr. CHASE. Mr. President, I never proposed such a resolution; never voted for any such resolution; I never would propose or vote for such a resolution?

Mr. BUTLER. It is attributed to the Senator who has just taken his seat, if the accounts in the newspapers are to be relied upon.

Mr. CHASE. I suspect that if the Senator relies upon no better authority than the newspapers, he will find himself often misinformed. [Laughter.]

Mr. BUTLER. I should hardly have supposed that such a remark would come from one connected with newspapers himself. [Renewed laughter.] When an honorable Senator rises upon this floor and disavows anything publicly charged to him I shall give him credit for it and not contradict him. I can say that heretofore this opinion has been attributed to both himself and one of the Senators from New York, [Mr. SEWARD.] They have been thought to be extra-constitutional. They have been thought to take an *extra* view of this subject altogether.

But, sir, I come to the question of fact. Is it not notorious that slaves do escape into Ohio, and that masters cannot recover them? I do not now speak of laws. I do not know that there are any laws there, one way or the other, upon the subject. I have looked over the laws, and can find no positive enactment. I believe the only sister of the Western States not tainted in the way I have named is Iowa. I believe there is no law there, but that there is rather a disposition to coöperate. As I have no specific laws before me of the other Northwestern States, it is unnecessary to name them in detail. They give no assistance, and allow and countenance abolitionists in carrying on their unconstitutional depredations.

Mr. President, there are gentlemen representing the non-slaveholding States, who I can readily conceive, have their difficulties. Some, I believe, have struggled against them. Others have been the willing instruments of their constituents. But, sir, they have done a wrong; they have perpetrated a great injustice. They have heaped injustice upon the Southern portion of these United States to an extent which they have not realized.

Some of them assume to themselves an excellence, under the professions of a high morality, that I will not say they deserve. Any morality that assumes to be above observing the obligations of a common compact I cannot understand. I do not think that those who profess it are better men than the rest of us. I would not have an inference drawn that I think them better men than the framers of the Constitution—than Franklin or Hamilton. But, borrowing a quotation, once so eloquently made use of by my friend from New York, who sits near me, I may say—

"The ambitious youth who fired the Ephesian dome,
Survived in fame the pious fool who reared it."

This Constitution was reared as the temple of our liberties and rights. The fires on its altar were kindled and kept alive by patriotism, justice, and wisdom. And shall it be now that they only serve to light firebrands to burn it into ashes? I can say in good faith that these firebrands have never been lighted by any portion of my constituents. Their course has been marked by too many compromises, by an anxiety to preserve this temple from the conflagration of incendiaries. As the gentleman from Vermont [Mr. PHELPS] said the other day, I myself, under the Clayton bill, was willing to close this slave controversy on a point of honor. These remarks have led me into an episode.

I now come to another part of my argument.

Whilst I am willing to adopt the judgment in the case of Prigg *vs.* Pennsylvania, I do not adopt the conclusion of a majority of the court, in saying that it *exclusively* belongs to Congress to devise legislation to carry into effect the article of the Constitution under consideration. No, sir; Congress may legislate to some extent, but it can legislate only within a limited scope. The States are the parties who should carry out this provision as an *extradition* treaty; and until they give their coöperation, it cannot be carried out. Until that is done, the clause will be a dead letter.

I hesitate little in saying the decision will be regarded as erroneous in this, that the States have no duties to perform. The opinions of Chief Justice Taney and Judge Thompson are unanswerable, and will prevail in public estimation against those of a majority of the court. They say:

"They (the States) are not prohibited; but, on the contrary, it is enjoined upon them as a duty, to protect and support the owner when he is endeavoring to obtain possession of his property, found within their respective territories."

It does seem to me that this view of the matter is unanswerable. The argument so ably sustained is summed up in one sentence: "The States are, 'in express terms, forbidden to make any regulation 'to impair the master's right; but there the pro-'hibition stops."

Justices Thompson and Daniel, in well-sustained judgments, concurred with the Chief Justice. Judge Thompson said he had filed his opinion principally to guard against the conclusion "that 'by my silence I assent to the doctrine that all le-'gislation on the subject rested exclusively in Con-'gress, and that all State legislation, in the absence 'of any law of Congress, is unconstitutional and 'void."

The mere *dictum* of the court does not bind me, nor can it, in justice, exonerate the States from their duty.

But, as Congress has no way of compelling the States to perform this duty, which good faith to the Constitution would enjoin, it becomes imperatively the duty of Congress to do all it can. What can it do? The bill under consideration contains

*In 1843, Messrs. Chase and Lewis published a call for an abolition convention at Columbus. The convention met, and, among its doings, it adopted the following resolution which was proposed by Mr. Chase *in propria persona*:

Resolved, That we hereby give it to be distinctly understood by this nation and the world, that the *abolitionists*, considering that the strength of our cause lies in its righteousness, and our hopes for it in our conformity to the laws of God and our support for the rights of man, we owe to the sovereign Ruler of the Universe, as a proof of our allegiance to Him, in all our civil relations and offices, whether as friends, citizens, or as public functionaries, sworn to support the Constitution of the United States, *to regard and treat the third clause of the instrument, whenever applied in the case of a fugitive slave*, AS UTTERLY NULL AND VOID, *and consequently as forming no part of the Constitution of the United States*, WHENEVER WE ARE CALLED UPON AS SWORN TO SUPPORT IT.

some provisions that may be enforced, and such as may give some aid to the slave owner, provided its provisions are carried out in good faith by the Federal agents enumerated in it. They derive their appointment, in part, from slaveholders; and they are their agents. We can require them to do all such duties as may be imposed upon them, and they are only the duties which all citizens should perform who owe allegiance to the Constitution.

This bill recognizes the principles of the act of 1793, so far as it regards the employment of Federal officers. It has nothing to do with State officers.

I shall not trouble the Senate by enumerating the officers upon whom this bill devolves duties. These duties are simple—simply to give a passport to an owner of a slave to carry him out of the State when required, or when the slave is brought before him. It is giving the owner the benefit of a Federal passport from one of its officers, to secure an acknowledged right. The bill requires all Federal officers to hear, determine, and give passports, and no more.

The pursuing owner of a fugitive cannot rely much on this kind of legislation in adversary communities, but it is all we can give him.

There is one clause which raises the penalty contained in the act of 1793, making the penalty $1,000, in lieu of $500.

I do not know how far this may be made available. It may give an owner an opportunity to offer a higher fee to a lawyer—one-half or all to recover the slave and to indemnify him for his expenses.

This bill, like all others of a kindred character, depends on the action of a fixed majority—a majority that has been made through the relation of constituent and representative. The popular language of the day is, that it is through an intelligent and watchful constituency that we are to have a safe and responsible representation, and that the wholesome operations of this Government are to be maintained through this influence; in other words, through the ballot-box. What a fallacy? It is no exaggeration when I say, it has been the ballot-box which has in some measure produced the mischiefs which some have supposed could be removed through it. It has been through the ballot-box that the sections have been arrayed against each other. Mr. President, it is worse than Pandora's box; for there was hope at the bottom of that, but there is no hope in this. You have a majority in the North. This majority is destined to increase; yes, sir, it is destined to increase. You have a high responsibility attached to you as a majority.

Sir, George Mason, one of the wisest, one of the most sagacious, and one of the firmest statesmen that "Virginia ever bred," or that ever deliberated in the councils of his time, has uttered language almost prophetic, which I will ask the Clerk to read:

[1] "If the Government is to be lasting, it must be founded in the confidence and affection of the people, and must be so constructed as to obtain these. The *majority* will be governed by their interests. The southern States are the *minority* in both Houses. Is it to be expected that they will deliver themselves, bound hand and foot, to the eastern States, and enable them to exclaim, in the words of Cromwell, on a certain occasion, 'The Lord hath delivered them into our hands?'"—*Vide 5th vol. Elliot's Debates, p.* 490.

Mr. President, George Mason's opinion was, that the moment we relied upon a majority we rested upon something worse than a weak staff to sustain us. It was that we were resting on a dangerous and selfish support—upon a broken reed, that would lacerate the hand that rested upon it. He wanted a stronger and more certain guaranty for the weaker party—or I would say, the minority. A provision was in the Constitution, whilst under consideration, requiring two-thirds to carry out certain measures—measures particularly affecting commerce and navigation.

But the South, under a compromise—oh! that word compromise, it has ruined a confiding people! it has been proposed by craft and adopted by generosity; it has subserved the ends of one party, and the party that consulted its interests; and has been used, not as a shield, but as a sword or a serpent, to strike or bite the party that submitted to it in confiding honesty—the South gave up the entire control of her commerce for a limited right to supply herself with slave power to a certain period. This concession has been fatal. It has been the confidence of uncalculating fairness on justice and magnanimity. Justice and magnanimity! What securities do they offer? The securities of a morality founded in casuistry, in hypocrisy, and practical exhibitions of a selfish regard to sectional interest. When the South was in position she did all this. She gave to the North the entire right of navigation—a right that has been like a drain, cut to take off the waters of one place to another—a drain that has been running from one section and forcing out its waters on another—a channel of exhaustion to one and of plethora to the other—a plethora that is likely to disease the circulation of this beautiful system, as it came from the hands of its makers.

When the Southern States had their fair share of power in this Confederacy did they abuse it? What instance can be pointed out of their violating an honorable engagement? Their reproach will be that they did not resist encroachment and aggression when they had the power to do so: their reproach will be that they have made a bond, and have had to pay its penalties; or, to change the expression, they have made a covenant, and have observed their part without the power of compelling the other party to observe the obligations incurred on their part.

The reply to complaint is, that a majority must govern—a proposition that involves in it an unlimited power—a power to construe and a power to enforce the Constitution. Well, sir, the power of a majority exists. How it will be used is to be determined. It carries with it its power, and ought to have associated with it its responsibilities. These responsibilities are of a grave and momentous character. The influence that may be exerted may, like all unrestrained influences, carry with it its own destruction—"*Quem Deus vult perdere, prius dementat.*" This power of a majority is indeed strong, and is destined, from the progress of events, to make a gigantic and fearful exhibition of its strength.

The destiny of this republic depends upon this increasing and aggressive majority. Even if it were to assign limits to itself to-day, I fear it would pass them to-morrow. It is supposing that selfishness will respect the prescriptions of justice. When Sylla wanted money, in Greece, he had to consult the oracle. The priest said the oracle gave

a groan as its response. The conquering general was left, according to his views, to make the interpretation; and, saying that Apollo loved music, the groan was an evidence of assent to his proposition, and he took the money. A self-sustaining majority will give a construction to this Constitution, and will take the money.

This majority will increase under the influence of a common interest. Minnesota, Nebraska, California, Deseret, and New Mexico are in a political condition to become States. They will have to be admitted by the votes of the South, and these votes will be given under an honorable obligation to observe the compromises of the past; but they surely should look to some security for the future. They can have no indemnity for the past; that has been absorbed in the elements of their ruin; it is beyond the power of revocation or remedy; we must consult the counsels of prudence to prevent further mischief. The juncture of affairs has assumed a practical aspect to the Southern States. Will these States stand still, and, under manufactured forms of legislation, see themselves become facile victims? Will they sanctify their own certain means of destruction? They will never be stronger than they are now; they will certainly be weaker. How far can they control their destiny? As far as they can, they are bound to discharge all the duties of political communities, regardless of consequences. We should do our duty, and leave the consequences to God. We must see to our rights now; the past shows that the southern people have made sacrifices, and gives evidence of a deep anxiety on their part to preserve the institutions of the country.

Is it to be supposed that we are to stand by while, I may say, the sections are in battle array, and see battalion after battalion marching over to the enemy without firing upon them; without taking some measure, some guaranty for our rights? Those who suppose so are mistaken. The questions involved have passed far beyond the turn where they can be decided by atoms of argument, where the scales can be held up and the arguments weighed with the nice precision of the gentleman from Vermont, [Mr. PHELPS,] who has handled the question with his usual ability. You cannot persuade the remnants of southern regiments—whose officers and men have shed their blood, and sacrificed their lives, and whose movements have sometimes secured the victory, some who have filed and taken the part of others—that they are not equal to them in any right that pertains to the soil that was conquered by their joint valor. No, sir; men who go for logic, when the instincts of nature dictate the determinations of the heart, make a great mistake. They make the mistake of Shylock, who relied upon his power of enforcing an unnatural bond—with this difference, of enforcing a bond that had no such penalties contained in it.

Sir, the time for hearing the forms and pretences of argument has passed. Every day's proceedings here show the temptations to further advance in making majorities, with a view of reaping the fruits of the measures devised, either in popular fame or chance for office. This is the theatre for demonstration, and we have *many actors*, all looking to the magical influence of majority, and especially a majority by looking to foreign accession.

The resolution introduced the other day by the distinguished Senator from Massachusetts is an illustration of this; and, sir, there are other resolutions to the *same intent*. They all profess a great love for coming foreigners—to increase a majority.

I am no enemy to the foreigner who wins his right to respect and confidence by industry and talent. If there is any one thing in my nature stronger than another, it is toleration; but I cannot allow toleration to exert the power of preference. Nor am I so blinded as not to see the tendency of things is to supersede the original organization of political communities.

These measures are seen by many, resisted by few. If all men would think independently, most men would think right. Politicians think for themselves, under professions of advancing the interest of others; but they bring about the events which make victims of those whose interest they profess to embrace.

Mr. President, it was not my intention to have dwelt so long upon these topics; but, sir, they are topics, as the gentleman from Vermont said, that will intrude themselves upon us. One cannot be considered without its being in connection with others. The destiny of the republic does not depend upon a single act. This slavery question is looked upon as the nucleus of sectional power, and few will take the side of the weaker party; and, left to take care of itself, it must do its duty, and in doing it, it will have to incur the reproach of insolence and the aspersions of treason; being under the ban of the press, and sectional influence, it makes its appeal to the tribunal of the Constitution.

But I fear that those who administer at that tribunal are not, like Justice, blind in their decision. I do not so much fear the vigilance of Argus as the acquisitiveness of Mammon.

The influence of the Government cannot be understood on the subject, without referring to other matters, especially those connected with our Mexican conquests.

These acquisitions bring with them the very question that will be discussed in this bill. These acquisitions were made by war, under a treaty of peace that terminated it.

The war with Mexico had different aspects; and so long as it was waged to defend the territory of Texas, as a part of the United States—so long as it was regarded as a war to maintain the obligations of a treaty with Texas; in other words, to do what Texas declared she had a right to do before her annexation—it had my approbation; and even after that, when it became a war of invasion and conquest, I could not counteract the Administration. I did more. I recommended that troops should be raised in my own little State; and they were raised—they were raised in a spirit of patriotism—to maintain the honor of the national flag.

But, sir, in the very first speech I every delivered in this Chamber, I said I wanted no more territory for this Republic. There were few who thought with me; few on the other side of the Chamber, and I believe but myself on this side. My voice was but the utterance of an humble individual. I thought I foresaw—and look to my speeches for what I said—that these acquisitions would be the apple of discord; and it has turned out that they are the apple of discord—the golden apple of discord. They were acquired by WAR, and war is the highest power that can be delegated to or exerted by any nation. It is a power that,

like Aaron's rod, swallows up all the rest. From necessity it must be illimitable in its means and unlimited in its ends. It may reach consequences which were never contemplated by the nation that waged it. The treaty that terminates it carries with it both rights and duties. The war with Mexico is an illustration of all that I have said. It was the first war for the conquest of foreign territory that has been waged by this Government, and it placed the generals who conducted it in a situation to exert powers which might have given them all the advantages of victory. But they were too pure to claim them, and the soldiery had too much of the home feeling of the citizen to think of or submit to the temptations of conquest; they were the growth of the Republic, and loved it with a patriotism that would maintain it. They had, under the laws of war, the powers of appropriation not only to kill in battle, but to take and confiscate property. And what a beautiful exhibition of our character was that—that no apprehension was entertained of any improper use of power abroad.

General Scott was in the heart of Mexico, with unlimited power, except such as was imposed by the laws of war under the laws of nations. And yet, while a triumphant soldiery were bestowing laurels on him, and when he was making the most eventful period of our history, he yielded to the first suggestions of his Government to return home. He had his faults in his complaints to his Government, but his acts refuted all that he said or wrote. The honor of his country was committed to him; and, notwithstanding he felt himself chafed in the apprehension that he might be superseded by a lieutenant general, he continued to do his duty. History will do him justice. And I think now that his country would be justified in bestowing on him the highest *titular* rank that is known in our military history, both for his patriotism and his *conduct* as a general. With the temptations of Julius Cæsar before him, though without the willing legions to support him, he exhibited the virtues of Camillus.

But, sir, I should rather speak of the results of the war than the incidents of its prosecution, as the first alone may affect the topics involved in this discussion.

These conquests, secured by a treaty of peace, have been made under the banners and in the name of the United States. Suppose the southern volunteers had gone and taken possession of them, and, under the pretence of an inherent right to self-government, had organized themselves into a State; and in one of the articles of their constitution had said that no one but a slaveholder should hold office, or have the franchise of a citizen: why, sir, with such a pretension, the northern people would have stood aghast, with their hands raised in astonishment at its injustice. What has been done? Why, a peculiar population, who did not win the territory, but who have had preferences from facilities of emigration, and, perhaps, also, from the suggestive and moulding influence of Executive authority, have appropriated it, and have excluded those who contributed to win it. They have defined limits, made a constitution, and done all other acts of an independent people—of a people who have so far the advantages of progressive society as to claim under a title of being the *first takers*, with the further pretension of excluding whom they please; and that without the advice, consent, or permission of Congress. Surely, when the cession was made, it was made to those who had declared the war; and who were they? They were the people of the different sovereign States, through their representative trustee—the Congress of the United States. And, as a trustee, Congress took, and as such must hold. It is a resulting consequence of the war power, clearly conferred by the Constitution, that Congress must take care of and govern the Territories that have been surrendered to its dominion—subject only to the limitations and controlling influence of equality and right among the partners who achieved the conquest.

Whilst this last view may be somewhat in conflict with the opinion of the distinguished Senator from Michigan, to whom I feel indebted for many profound thoughts and some highly eloquent sentiments, and, above all, for sound doctrine, that required some degree of firmness to avow and maintain; nevertheless, they are the doctrines sanctioned by the history of our institutions.

And both the history and spirit of these institutions inculcate a prominent idea of the distinguished gentleman referred to—that is, under a free charter of Government, to allow the people of a Territory to shape their own destiny, to have no prohibitions, to have *no dictations*, especially to have no Executive influence. But surely Congress ought to give the power of attorney to make a government; otherwise, violence will make the appropriation, and success will vindicate usurpation. Sir, I dread success. It has the fascination of fortune, and it takes a very stern justice to resist it—a justice which an honest minority may assert, but which a rude majority may, and I fear will, overrule.

This question, involving the rights of the South—involving the very existence of her institutions—cannot be overlooked in regard to these territorial conquests. They served to make an important part of the issue before us. I hope, sir, in looking to California, we may not be like the dog, that in snapping at the shadow lost the substance.

The old Atlantic States and their sisters have a common history—they were all Anglo-Saxon, and all were bound together by a common feeling. We should not withhold the dominion of our laws and Constitution from those who are entitled under the treaty of peace to claim them; they have a strong claim, resulting not from voluntary choice, but from the obligations of treaty. They ought to have the government that has been usually extended to other Territories that have either been acquired by treaty or have been surrendered by State cession. They are entitled to no more; and to claim more is to claim under the right of self-appropriation—the right of monopoly. And in such governments I would have some hand, perhaps a light one, in forming them through the appointment of officers, &c. If any man who claimed an office should have said that he wanted it, because he would exclude my constituents, I would have something to say about him. But if a government can be formed without such process, all the guaranties of a minority, or those who represent it are gone, and gone forever. If this experiment is final on the issue, I do not say that it was in the power of the South, under the operation of the common grants of Territories, to secure any rights

to carry the institution of slavery into them. We never claimed the right to establish, or by positive law to extend slavery. We fight under the doctrine of non-intervention—a doctrine inculcated by the principles of the Constitution. We want no prohibition in the settlement of these conquered Territories. Ours is the doctrine of the Constitution; it is the doctrine of *magna charta*, which was obtained by the Barons of Runnymede, who claimed that they were peers with any one; and, though they owned those who were bound to them by the tenure of servitude, they were not less the peers of any one for that reason. Nor, sir, will a slaveholder consider himself as an inferior because he has the dominion of slaves—beings that are in no worse condition than if they occupied the place assigned to them by hypocritical pretenders, or, what is worse, by heartless demagogues, whose selfishness may be measured by their extravagant professions.

I hope, sir, I shall never have the bad taste to speak of what my State will do; I never have done so. I know she has been spoken of and regarded in a way to provoke my resentments; but I know that rhetoric would not suit my own taste or that of the southern people.

How it has happened I cannot tell, but from some cause—not certainly deserved—Massachusetts and South Carolina have been made to take opposite positions in Federal politics; nay, more, to be made ostensibly bitter adversaries. It would be strange if those who had a common history should be the parties to destroy the bonds of a union formed in a spirit of cordial confidence. The quarrel of Boston was espoused without calculation by the people of Charleston. There is something in the historical fact, that John Hancock and Arthur Middleton, two of the wealthiest men of their day, seemed to have bound their respective States together by the strongest of personal pledges and associations. They tenanted the same house, eat at the same table, and worshipped at the same altar; and pledged their lives and property in a common cause, and that common cause was maintained by the common blood and treasure of the States. My State was a favorite colony of the mother country, and became the theatre of the deciding contest. There is scarcely a path or a rivulet in her borders that was not crimsoned by the blood of patriots and soldiers fighting in a common cause. And there is scarcely a hill that was not a camp-ground, on which floated the banner of a northern general, for common rights, without regard to sectional institutions. Greene, at Ninety-six, and Camden, recognized Sumter, Marion, and Pickens, as his equals; and, when he concluded to settle and live among us, he gave evidence that he was no sectional bigot. His ashes are now mingled with the soil of Georgia, and the epitaph on his tombstone will teach a lesson of liberty and self-respect. These lessons are written in our earlier history, and they will not be disregarded; they cannot, without incurring an imputation of degeneracy. If I knew at this moment that all political connection was to cease between the North and the South, I would, as a matter of choice, hang up in my parlor the portraits of such men as Adams, Hancock, and Sherman; and they would be full of historical instruction: one lesson they especially teach, never to submit to a wrongful and oppressive exercise of authority. They would inculcate a lesson to maintain the rights that you were born to.

The Southern States have a common destiny; but some are more particularly concerned, from geographical position, than others may think themselves.

Diomedes was the youngest hero at the siege of Troy. His courage was marked by promptness and intrepidity, and compared well with the sagacious and perhaps selfish courage of Ulysses. Georgia was the youngest sister of the thirteen. She has made her pledge in the spirit of Diomedes. And, sir, she will, with her sisters, maintain her motto—"Equality or Independence."

Mr. CHASE. I do not propose now, Mr. President, to enter into the general question which has been presented by the bill reported from the Judiciary Committee, but I have been myself individually referred to in a manner which makes it proper for me to say a word or two.

Mr. BUTLER, (interposing.) The statement to which I referred came from an Ohio paper. That is my authority. I will hand it to the gentleman before he begins his remarks, in order that he may know upon what I based the remarks that I made in relation to him.

Mr. CHASE. I know no reason, Mr. President, why a particular Senator should be singled out upon this floor for a special exhibition of his personal opinions and views. It may, perhaps, be thought somewhat safer to attack a Senator's supposed positions, which may separate him in political action from the two leading parties of the country, than other Senators, who have the advantage of prompt and powerful party support. The Senator from South Carolina thought proper the other day to bring before the Senate a letter written by myself, and now the same Senator has seen fit to introduce here a newspaper paragraph, attributing to me a certain resolution.

Mr. President, I wrote the letter attributed to me. I wrote that letter to the late Speaker of the House of Representatives of my State. I did not expect its publication. If I had, a phrase or two perhaps might have been made less obnoxious to verbal criticism. But, sir, the general propositions maintained in that letter I would maintain in public, as I have maintained them in private. I have no sentiments for private communication which I am not ready to avow on proper occasions everywhere. My opinions, Mr. President, all men may know, and these opinions I am ready to defend. They are not sectional opinions. I was made to say, in the report of some remarks which I uttered in the Senate the other day, that the free Democracy—the party with which I have acted—was "sometimes sectional" in its character. I did not say that. It is not so. I hold no views which I deem sectional. Nor are they sectional, unless the opinions of Washington, and Jefferson, and Madison, were sectional also; for every position which I maintain is fortified by their authority—by southern authority. Not, sir, that I feel the need of southern authority; it is enough for me that the opinions which I maintain are commended to the approval of my own judgment by the force of reason—enough that I am myself satisfied that those opinions are sound, just, and constitutional. Such opinions I shall maintain fearlessly, and maintain everywhere—always, however, with entire respect for the opinions of those

who differ from me. Why, sir, we are in a Senate—a Senate of equals, perfect equals; and while I respect the opinions of every Senator upon this floor, and desire that he should utter them with entire freedom, I shall claim the like respect for opinions which I utter—the results of consideration, reflection, and an honest judgment.

Enough, sir, for the letter. Now, in regard to this newspaper paragraph. I am not sorry that the Senator from South Carolina has deemed my humble life worthy of his biographical investigations. He will find nothing in the history of that life which I am unwilling to have known—nothing in any opinions advanced by me which I am not ready to avow. But, sir, I do not choose to be held responsible for opinions not mine. This newspaper scrap ascribes to me the paternity of a resolution supposed to recognize the propriety of mental reservation in a certain case.

I have only to say I never proposed the resolution; never voted for the resolution; I never would propose or vote for such a resolution. I hold no doctrine of mental reservation. Every man, in my judgment, should say precisely what he means—keeping nothing back, here or elsewhere. I should like, sir, to see every man maintain here the same positions which he maintains at home—bold enough and resolute enough to advocate in the Senate the measures which he advocates before his constituents.

I have nothing further to say, Mr. President. I regret that I have been constrained to speak at all of matters personal to myself. But, under the circumstances, I felt it my duty to say what I have said.

Mr. BUTLER. I hope the paragraph which has been referred to will be read.

Mr. CHASE. Let it be read. I sent it to the Clerk for that purpose.

Mr. MASON. I wish to ask the Senator if he will answer one or two questions for my information, and the information of the country. I understand him to state that he did not offer that resolution, that he never voted for it, and never would vote for it. I gather from the same newspaper publication, that that resolution was offered at a meeting of the friends of that gentleman, convened by his influence, and at which I take it for granted he was present. Now, I ask him to inform me and the country whether, by whomsoever it was offered, that resolution was not passed in his presence? I hope also that the extract will be read.

[The Secretary read the extract, being the same as published in a note in a preceding column.]

Mr. CHASE. I do not know that I understand correctly the inquiry of the Senator from Virginia.

Mr. MASON. My inquiry is, whether the honorable Senator knows and can inform me whether that resolution was offered and passed at a meeting convened at his instance?

Mr. CHASE. I do not know, Mr. President, how far it is deemed proper to go into subjects of this character here. Certainly an investigation of this sort in the Senate strikes me as somewhat out of place; but I will state for the information of the honorable Senator that the resolution in question was not proposed and adopted at any convention held or convened at my instance in the State of Ohio. It was not proposed or adopted at the convention referred to in the newspaper scrap brought here. It was, however, introduced and passed in a convention held at Buffalo, in the State of New York—I have forgotten the year, but I think it was 1843. I have answered the specific inquiry of the Senator, and might leave the subject here; but perhaps it would be well, since the matter has been brought before us, to state further what is within my knowledge in reference to it. The resolution was presented at a mass convention of what was called the Liberty party. I was present, and was a member of the committee on resolutions. The resolution in question was submitted to this committee, who declined to report it for the action of the convention. It was opposed by me in the committee room, but I cannot say how far the action of the committee was attributable to that. It was afterwards introduced to the convention when I was not present, by its author, and was adopted, after a speech from him, as often happens in such cases, without discussion or examination. It did not express, in my judgment, the sense of the convention or of the party. Is the Senator satisfied?

Mr. MASON. Perfectly, sir.

Mr. CHASE. Having referred to the political organization known as the Liberty party, I will take occasion to add that, in my judgment, a body of purer men was never associated in political action. They were men who had honesty enough to speak as they meant, and courage enough to act as they resolved.

Mr. MASON. I desire to be heard upon the bill now before the Senate.

Mr. CHASE. I intended to propose, as the time for an adjournment has nearly arrived, that the bill be passed over informally.

Mr. HAMLIN. If there is nothing else before the Senate, I will move that the Senate now go into Executive session.

Mr. MASON. I desire that this subject should be passed over informally.